

**AMENDMENT 1 TO LICENSE AGREEMENT
BETWEEN THE CITY OF ALEXANDRIA, VIRGINIA AND THE TALL SHIP
PROVIDENCE FOUNDATION FOR THE DOCKING OF
THE TALL SHIP PROVIDENCE**

THIS AMENDMENT to the License Agreement dated April 15, 2019, ("Amendment") is made this ~~31~~ day of June 2020 (the "Amendment Effective Date"), by and between the TALL SHIP PROVIDENCE FOUNDATION, a non-profit, tax-exempt organization ("Licensee") and the CITY OF ALEXANDRIA, a municipal corporation of the Commonwealth of Virginia ("Licensor") or collectively the "Parties".

RECITALS

WHEREAS, the Licensor and the Licensee are parties to a License Agreement permitting Licensee to operate the Tall Ship Providence solely and exclusively as a living history museum and tourist attraction open to the public and may schedule public cruises and private charters, at the Alexandria Marina, dated April 15, 2020 (the "Original License Agreement"); and

WHEREAS, the Licensor and the Licensee wish to amend the Original License Agreement, to extend the term of the Original License Agreement, as amended, from June 1, 2020 through December 31, 2020; and

NOW THEREFORE, the Licensor and the Licensee, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AMENDMENT

1. **TERM/AMENDMENT**: The Term of this Agreement as set forth in Paragraph 7(c) of the Agreement shall be extended until December 31, 2020. The term "Agreement" as used in this First Amendment or in the Original License Agreement shall mean the Original License Agreement, as amended.
2. **LICENSE FEE**: The license fee shall be \$1,287.50 per month consistent with Section 9(a) of the fully executed April 15, 2019 Agreement.
3. **RATIFICATION**: Except as explicitly amended hereby, the provisions of the Agreement and all exhibits and attachments thereto are ratified and confirmed, and the Agreement remains in full force and effect.

IN WITNESS WHEREOF this Amendment No. 1 has been duly executed by the Parties hereto as of the date and year first above written.


LICENSOR:

TALL SHIP PROVIDENCE FOUNDATION
a non-profit, tax-exempt organization

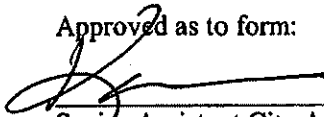
By: 
Clair S. Sassin
Title: Executive Director

LICENSEE:

THE CITY OF ALEXANDRIA, VIRGINIA, a
municipal corporation of the Commonwealth of
Virginia

By: 
Mark Jinks, City Manager
Debra R. Collins, Deputy City Manager

Approved as to form:


Senior Assistant City Attorney

LICENSE AGREEMENT**CITY OF ALEXANDRIA, VIRGINIA, AND
THE TALL SHIP PROVIDENCE FOUNDATION**

THIS AGREEMENT is made this 15th day of April 2019, by the City of Alexandria, a municipal corporation of Virginia ("Licensor"), and the Tall Ship Providence Foundation, a non-profit, tax-exempt organization ("Licensee").

WHEREAS, Licensee desires to dock and operate the Tall Ship Providence ("Vessel") a replica historic tall ship that will provide a living history museum, public cruises, private charters and retail items, while docked at the Alexandria Marina's G/H T-Head Pier in the City of Alexandria, Virginia; and

WHEREAS, Licensor owns the Alexandria Marina, which is suitable for docking the Vessel; and

WHEREAS, Licensor is willing to permit Licensee to use the Alexandria Marina for docking purposes and for visitor and service access in accordance with the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the premises, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Representations. By executing this agreement, the Licensee warrants that it is the legal owner and operator of the Vessel described in paragraph 15 below (the "Vessel") and is authorized to enter into this Agreement.
2. Applicability of City, State and Federal Law. This Agreement is subject to title 6, chapter 3 of the Alexandria city code and any and all applicable provisions of federal, state and local law. Licensee agrees to comply with the criminal, fire, health and safety

laws of the City of Alexandria and the Commonwealth of Virginia pertaining to the operation of the Vessel. Licensee shall permit officers and employees of the City of Alexandria charged with the enforcement of such laws to board and inspect the Vessel for the purpose of enforcing such laws. Licensee hereby agrees to permit periodic inspection of the Vessel by code enforcement inspectors of the City of Alexandria, and to remedy to the extent practicable any and all deficiencies and unsafe conditions found by such inspectors.

3. Rules and Regulations. Licensee shall comply with all applicable rules and regulations of the City of Alexandria, including the Rules and Regulations of the Alexandria Marina which are set forth in this Agreement (Attachment A) and which are incorporated by reference into this Agreement as if fully set forth herein. The Licensee shall also comply with any rules and regulations of the City or of the Alexandria Marina which are adopted subsequent to the execution of this Agreement, unless such rules are manifestly unreasonable in their application to Licensee.
4. Insurance. Licensee shall certify to the satisfaction of the Licenser that the Licensee and the Vessel are covered by:
 - a. liability insurance in an amount not less than \$1,000,000 per person per occurrence and \$3,000,000 in the aggregate per occurrence which insures the Licensee against claims of personal injury and property damage arising from the negligent use or operation of the Vessel by the Licensee or Licensee's agents and employees;
 - b. insurance in the amount of not less than \$1,000,000 per occurrence which insures Licensee, regardless of fault or negligence by Licensee or any agent or employee

of Licensee, against claims of damage to property of the City of Alexandria caused by (i) the use or operation of the Vessel by Licensee or any agent or employee of Licensee, and (ii) any casualty or event involving the Vessel, or any agent, employee, invitee or guest of Licensee; and

- c. wreck removal insurance to cover the cost of removing the Vessel if it should sink or become awash, and the Licensor shall be named beneficiary of such policy.

Licensee agrees to maintain such insurance coverage throughout the term of this agreement, and to furnish evidence to the Licensor of such coverage prior to the effective date, and throughout the term, of this agreement. In addition, Licensor shall be named on the liability insurance policy required by subsection (a) as an additional insured.

5. Indemnification. Subject to the dollar limitations set out in subsection 4(a), and apart from and in addition to any insurance coverage, Licensee agrees to indemnify and hold harmless the Licensor and all of its officers, employees and agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorneys' fees), and against any losses, resulting from or arising out of any bodily injury or property damage caused, in whole or in part, by any act or omission of the Licensee or any of its employees, agents, invitees, licensees or guests in the course of operating, maintaining or using the Vessel while located within or approaching or departing the Alexandria Marina, except to the extent such injury or damage is caused by the negligence of the Licensor or its officers or employees.
6. Waiver of Licensor's Liability. By executing this Agreement, Licensee expressly acknowledges and agrees that the Licensor and its officers and employees shall not be liable to Licensee or to any of its employees, agents, invitees, licensees or guests for any

bodily injury or property damage sustained by any of them while on Licensee's Vessel or while at or on the Alexandria Marina, or for any property damage to Licensee's Vessel sustained while the Vessel is located within or is approaching or departing the Marina, except to the extent such injury or damage is caused by the negligence of the Licensor or its officers or employees.

7. Grant and Term of License.

- a. In exchange for the consideration described herein, Licensor grants permission to Licensee to dock the Vessel at a berth ("Berth") located at the G/H T-Head Pier in the Alexandria Marina and shown on the attached plat (Attachment B).
- b. The Licensee shall provide the Licensor with a mooring line arrangement and fendering plan a minimum of thirty (30) days in advance of the arrival of the vessel for evaluation by the Licensor. The Licensee shall receive in writing an approved mooring line arrangement and fendering plan from the Licensor prior to the arrival of the Vessel.
- c. The term of this license shall be one (1) years, from June 1, 2019, through May 31, 2020.

8. Renewal. Provided Licensee is not in default of its obligations of performance under this Agreement at the end of the one (1) year term of this Agreement, Licensee shall have the right to negotiate this Agreement for up to one (1) additional year term exercised by Licensee by written notice to Licensor within three (3) months immediately preceding the expiration of the original term of this Agreement. The City Manager for the City will analyze and review use of the docking by Licensee under terms of this Agreement to determine if additional or modifications to the terms of this Agreement are necessary

including but not limited recalculating the annual fee. Notwithstanding this option for renewal, the City Manager shall have the right to terminate this Agreement at the end of any term if the City Manager determines the lease agreement is no longer in the best interest of the public.

9. License Fee. Licensee shall pay to Licensor a license annual fee for the License Rights to use the Berth.

- a. *Annual Fee*. The annual fee will be \$15,000 to be paid in twelve (12) equal payments. This amount will increase by 3% annually should the Licensee request a renewal consistent with section 8.
- b. *Due Date*: Each monthly fee will be due on the first day of each month with the first fee due on June 1, 2019.
- c. *Payment Mailing Address*. All payments shall be sent to the Licensor at the following address:
 City of Alexandria/RPCA
 Jack Browand, Division Chief
 1108 Jefferson Street
 Alexandria VA 2314

Check tendered in payment of the monthly fee shall be made payable to the "City of Alexandria."

- d. *Late payment*: In the event any payment due to the Licensor hereunder is delayed by more than thirty (30) days business days, such payment shall be deemed to increase by ten percent (10%) of the payment due. Interest on the unpaid amount shall accrue at the rate of 2.5% per month from the due date until paid.

10. Assignment. This Agreement granting a license may not be assigned by the Licensee without the prior written consent of Licensor, which consent may or may not be granted at the Licensor's discretion.

11. Termination. In the event that Licensee violates any of the terms of this Agreement, Licensee shall be considered in default. If such default continues for thirty (30) days after Licensee has received written notice of the default, then this Agreement may be terminated, effective immediately, by Licensor. Notwithstanding the above, Licensor shall have the right to terminate this Agreement, effective immediately, in the event that Licensee shall be adjudicated as bankrupt, or if a receiver is appointed in a legal proceeding of any kind to take possession of the assets of Licensee, or if any creditor of Licensee shall seize, take possession of or foreclose upon the Vessel. Licensor shall also have the right to terminate this Agreement, effective immediately, if Licensee fails to maintain all of the types of insurance required by section 4 of this Agreement.
12. Removal. If this Agreement is terminated, Licensee shall immediately remove the Vessel from and cease utilizing the Berth and any alternate docking facility owned by Licensor. If it becomes necessary for Licensor to remove or cause the removal of the Vessel through any legal proceeding, or otherwise, then the Licensor shall be entitled to recover all costs incurred in conjunction with the removal and with such proceeding, including attorney's fees, from the Licensee and any successor in interest in ownership or possession of the Vessel, and such liability shall be joint and several.
13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
14. Description. The Vessel is a replica tall ship with a deck 62 feet in length, an overall length of 110 feet (including bowsprit/jib-boom), and 22 feet in width. The Vessel mast has a height of 93 feet and 6 inches.
15. Use of Vessel. The Vessel shall be used solely and exclusively as a living history

museum and tourist attraction open to the public and may schedule public cruises and private charters. Licensee may operate a Tall Ship Providence Foundation Gift Shop on the Vessel or from G/H Pier Gazebo consistent with 17 m., not both, in conjunction with the docking. All activity and business operations are limited to the G/H Pier unless permission is provided by the Licensor in writing. The Licensee is not permitted to conduct any activity or business operation from the shore adjacent to the G/H Pier.

16. Fuel. The Vessel shall not take on gasoline or other fuel when it is docked at the Berth.

17. Provisions, Operation and Appearance.

- a. Licensee agrees to provision the Vessel at such time and in such manner as to minimize the adverse impact upon businesses, their invitees and guests, and members of the general public on or adjacent to the Alexandria. Licensee shall require all vendors and service personnel who supply goods or render services to the Vessel, or who engage in any activity related to the use or maintenance of the Vessel, to use the loading zone in Thompson's.
 - i. Licensee agrees that public access to the G/H Pier shall be open to the public consistent with the posted hours of for the Alexandria Marina.
 - ii. The Licensee shall not interfere with the use of and access to all designated slips on the G/H Pier.
 - iii. Licensee shall not interfere with and must allow for unimpeded access to the City of Alexandria's Fire Boat. The Licensor retains the right to modify Licensee's business operations to ensure full access to the Fire Boat.
- b. At all times, Licensee shall maintain the Vessel in such a manner as to keep it

neat and orderly in appearance, with its operating systems functioning in good working order.

- c. Licensee shall not engage in any activity which results in visual, excessive noise, foul odors, the accumulation of litter or debris on the shore areas adjacent to the Berth, Founders Park or in the waters adjacent to the Berth, or such other conditions which the Licensor may, in its sole discretion, deem inconsistent with the use and enjoyment of the Alexandria Marina. No music, amplified sound, machine noise or any other noise from the Vessel shall be audible at North Union Street at any time.
- d. Licensee is permitted to conduct public operations on the G/H Pier on the Vessel as follows:
 - i. Public tours from 9 a.m. to 8 p.m. Monday through Friday, and from 11 a.m. to 5 p.m. Saturday, Sunday & Holidays;
 - ii. Private craft beer cruise from 6 p.m. to 10 p.m. on Friday;
 - iii. Private pirate cruise from 8:30 a.m. to 10:30 a.m. on Saturday & Sunday and pirate or sunset cruise from 6 p.m. to 10 p.m. on Saturday & Sunday;
 - iv. Private charters from 5 p.m. to 12 a.m. (midnight) daily; and
 - v. Lectures, classes and other educational activities from 8 a.m. to 11 a.m. on Saturday & Sunday
- e. Licensee shall not place any signs, advertisements or notices of any nature, on any part of the exterior portion or any bulkhead, window or door of the Vessel, or on any part of the dock of the Alexandria Marina, without Licensor's prior written consent and without such sign, advertisement or notice complying with all applicable laws, including but not limited to the City of Alexandria Zoning Ordinance, which shall be deemed applicable to the Vessel for the purposes of

this paragraph.

- f. No more than 44 persons, which includes the crew and is permitted by the Coast Guard, may occupy the Vessel at any one time.
- g. Licensee shall undergo a crime prevention survey by the Alexandria Police Department within 15 days of the date that this Agreement is finally executed, or by such other date as may be mutually agreed upon by the parties to this Agreement, and Licensee shall implement all crime prevention procedures and devices recommended by the Alexandria Police Department within 15 business days of receiving the results of the survey.
- h. If the Vessel is closed to the public for more than 30 consecutive days, Licensee shall notify Licensor in writing of the reason for the closure and the anticipated date when the Vessel will reopen. Licensor may require removal of the Vessel from the Alexandria Marina if the Vessel is closed to the public for more than 30 consecutive days during the period of April 1 through November 30.
- i. Licensee may install one (1) security gate on the G/H Pier T-Head for securing the Vessel. The Licensee shall receive written permission from the Licensor prior to the final purchase and placement of the security gate on G/H T-Head.
- j. Licensee may install one (1) storage box on the G/H T-Head for the storage of safety equipment and other docking material not to exceed dimensions of 60"x25"x25". The Licensee shall receive written permission from the Licensor prior to the final purchase and placement of the storage box on G/H T-Head.
- k. Licensee may store up to two (2) gangways for access to and from the Vessel on the G/H T-Head.

- l. Licensee may display brochures and informational material about programs and activities available and about the Tall Ship Providence Foundation, during the hours of operation set forth in paragraph 17.d.
- m. Licensee may use the G/H Pier Gazebo for business operations, including shade umbrellas and mobile retail kiosk during the hours of operation set forth in paragraph 17.d. All equipment used for business operations other than those set forth in this paragraph 18 (m) shall be removed daily, i.e equipment enumerated in paragraphs 17(k), (l) and (m).
- n. The Licensee is not permitted to conduct any activity or business operation from the shore adjacent to the G/H Pier.
- o. Licensee shall remove the storage box, security gate and gangways at the end of the Agreement.

18. Utilities and Services Provided.

- a. Licensor shall provide power to the Vessel and in support of its business operations on the G/H Pier. The Licensee shall be responsible, at its expense, any requested upgrade to electrical power. Upon the expiration or termination of this Agreement, electric upgrades, if approved, shall become the property of Licensor.
- b. Licensor shall provide water to the Vessel.
- c. Licensor shall provide pump out service for the Vessel.

19. Refuse. Licensee shall arrange and pay for the prompt and continuous collection and removal from waterfront areas adjacent to the G/H Pier of all litter, debris and refuse generated by the Vessel and of its employees, agents, invitees, licensees or guests. If Licensee fails to fulfill its obligations under this, paragraph 20, as determined by

Licensor in its sole discretion, Licensor may arrange and pay for such collection and removal of litter, debris and refuse. Licensee shall, upon demand by Licensor, reimburse Licensor for expenses incurred for such collection of refuse within 30 days of Licensee's receipt of a billing statement itemizing such expenses and issued by Licensor.



20. Parking. Licensee shall take all reasonable efforts to advise passengers of off-street parking facilities to avoid on-street parking in the City, including, without limitation, providing passengers, visitors and their agents with maps and directions to off-street parking facilities and shall provide such maps and directions available at Licensee's office, website and included in any and all other promotional materials.

21. G/H Pier, Gazebo & T-Head.

- a. Licensor has permitted the Licensee use of the G/H Pier, Gazebo and T-Head dock depicted on Attachment A. It shall be the sole responsibility of Licensee, throughout the term of this Agreement, and at its sole cost and expense, to repair and/or replace any damages to services and features on the G/H Pier due to damage caused by the Vessel or resulting from any use by the Licensee of the pier, gazebo and/or T-Head and/or caused by activities covered within this Agreement. The Licensee shall notify the City within twenty-four (24) hours of any such damage.

SIGNATURES FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF ALEXANDRIA, a municipal corporation of Virginia By:  _____ Mark B. Jinks City Manager Date: <u>4-25-19</u>	TALL SHIP PROVIDENCE FOUNDATION By:  _____ Clair S. Sassin Executive Director Date: _____
APPROVED AS TO FORM:  _____ Assistant City Attorney	

ATTACHMENT A



City of Alexandria
Department of Recreation, Parks and Cultural Activities
Marina Slip License Agreement Holder Rules and Regulations



Please read the entire license agreement; it is a legal document.

In addition to the City of Alexandria ordinances and Marina Rules and Regulations, a number of important policies have been developed regarding Alexandria Marina Boat Slip License Agreement Holders. These policies are summarized below. The City shall have the authority to interpret and enforce these rules and regulations in its best interest.

City of Alexandria Residency Policy

- (a) City of Alexandria residents will be given first priority to hold and/or obtain a boat slip lease agreement at the Alexandria Marina. Failure to maintain City residency may result in the City electing not to renew or offer a Boat Slip License Agreement.
- (b) City of Alexandria Real Estate Assessment or Voters Registration card is required to prove residency. If submitting a Voters Registration Card the applicant must also submit an original, current month electrical or gas bill for the resident address in the name of the Boat Slip License Agreement Applicant. The above-required residency materials provided are subject to verification.
- (c) Marina Slip License Agreement Holders who are unable to prove residency during the license renewal term will be given one license year (at non-resident rates) to continue docking at the marina after which time the License Agreement will not be renewed by the City and the Owner must remove their boat from the Alexandria Marina.

Utilities

- (a) The utility fee for one (1) electrical connection and one (1) water hose bib connection is included in the yearly Agreement fee.
- (b) Upon written approval of the Dockmaster use of a second electrical connection by the Agreement holder will incur an additional \$3 per day fee.
- (c) Agreement holders are not to connect to additional shore power without the written consent of the Dockmaster. The marina will, without notice, remove any unauthorized power cords and the City will not be responsible for any consequence of such removal.
- (d) UL approved cords required. Owner will connect to marina power outlet only with serviceable, UL-approved power cords designed specifically for marine use and rated for the electrical service to which connected.
- (e) Alterations of electric supply system prohibited. No addition, alteration or modification shall be made to the electrical supply system provided by the Alexandria Marina. The City shall not be responsible for electrical interruptions or power surges, or the termination of electric because of storm management procedures, or the results or damage there from.
- (f) Continuity of electrical power, where provided, is not guaranteed by City.
- (g) Cable television is not available at this time; however, Owner may use Owner's own satellite dish, as long as it is mounted on Owner's vessel.

Water Level

The City makes no representations or guarantees concerning water level and/or tidal fluctuations.

ATTACHMENT A

Attachment A

Alterations

Lessee shall make no structural, cosmetic or operational changes to the premises (including but not limited to pilings and piers) without first receiving written approval of the Dockmaster.

Multiple Licenses.

Rental by **household** of more than one Marina slip at the same time is prohibited. A household is defined as a person or group of people occupying a single dwelling.

24-Hour Absence.

If the vessel is to be out of its slip in excess of 24 hours, the Owner shall notify the Marina Dockmaster. In this event, City reserves the right to rent the Owner's slip during all or part of the period that the slip will be vacant.

Boat Length Policy

- (a) The City of Alexandria Ordinance prohibits boat slip agreements for pleasure boats exceeding 40 feet in boat length. Boat length is defined as the length of the boat and does not include stern pulpit, bowsprit, dinghies, davits, swim platform, or outboard motor.
- (b) Per foot annual boat slip agreement fees are determined by the Overall Boat Length including bowsprit, stern pulpit, dinghies, davits, outboard motors and swim platform as measured annually by the Dockmaster.
- (c) The annual license fee will be based on a minimum length of 24 feet or the actual length if greater than 24 feet.
- (d) Vessels with boat slip licenses shall not exceed 40 feet in Boat Length. Boat length is defined as the length of the boat and does not include stern pulpit, bowsprit, dinghies, davits, swim platform, or outboard motor.
- (e) Vessel Overall Boat Length shall not exceed 45 feet. Overall Boat Length includes bowsprit, stern pulpit, dinghies, davits, outboard motors and swim platform and is measured annually by the Dockmaster.

Marina Rules and Regulations

The Agreement Holder shall follow and be responsible for instructing all guests to follow the Rules and Regulations of the City Marina as well as City of Alexandria Ordinances.

Boat Lines and Bilge Pump

Boat lease agreement holders are required to maintain lines and bilge pumps (if boat has a bilge) in good working condition at all times. All lease agreement boats with a bilge docked at the City Marina must have a fully functioning automatic bilge pump. In addition, lease agreement boats must have at least five (5) dock lines; two bowlines, two stern lines and one spring line. The lines should be at least 2/3 of the length of the boat and the spring line should be the full length of the boat. All license agreement holder boats should have spare lines available on their boat that are accessible and known to the Dockmaster.

Patrol of Potomac River

The Potomac River waterway used to access the City of Alexandria waterfront and marina is owned and patrolled by the District of Columbia. Despite the patrolling efforts of D.C. Harbor wakes do occur. Wakes range from small and minor to large and rolling. Please secure all of your onboard equipment, cabinets, and doors to help prevent items from being damaged. The City of Alexandria shall not be responsible for wakes or the results or damage from wakes.

ATTACHMENT B

